



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

Docket No. USCG-2012-0889

RIN 1625-AA00

Safety Zone; Wounded Warriors Benefit, Lake Erie, Huron, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Lake Erie, East Huron, Ohio. This regulation is intended to restrict vessels from portions of Lake Erie during the Wounded Warriors Benefit. This safety zone is necessary to protect spectators and vessels from the hazards associated with launched pumpkins.

DATES: This rule is effective from 10:00 a.m. on October 27, 2012, until 7:00 p.m. on October 28, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0889. To view documents mentioned in this preamble as being available in the docket, go <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also

visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail the Marine Events Coordinator, LTJG Benjamin Nessia, Marine Safety Unit, Toledo, 420 Madison Avenue Suite 700, Toledo, OH 43604; (419) 418-6040, email Benjamin.B.Nessia@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the

public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The details of this year's event were not submitted in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, waiting for a notice and comment period to run would inhibit the Coast Guard from protecting the public and vessels from the hazards associated with the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying this rule would be impracticable and contrary to the public interest for the same reasons discussed in the preceding paragraph.

#### B. Basis and Purpose

On October 27, 2012, a pumpkin launching event will take place on Lake Erie in which participants shoot pumpkins from an air cannon into the lake in East Huron, OH. This event is known as the Wounded Warriors Benefit. The Captain of the Port Detroit has determined that this benefit is in close proximity to other watercraft and poses a significant risk to public safety and property. Thus, the Captain of the Port Detroit has determined it necessary to establish a safety zone

to control vessel movement around the location of the launch platform which will help ensure the safety of persons and property at these events and help minimize the associated risks.

#### C. Discussion of Proposed Rule

As suggested above, this rule is intended to ensure safety of the public and vessels during the Wounded Warriors Benefit. This rule will be effective from 10:00 a.m. on October 27, 2012 until 7:00 p.m. on October 28, 2012, and enforced from 10:00 a.m. until 7:00 p.m. on October 27, 2012; in the event of inclement weather, the zone will be enforced from 10:00 a.m. until 7:00 p.m. on October 28, 2012. The safety zone will encompass all waters of Lake Erie within a 2500 ft radius of the pumpkin launching site located at position 41° 23' 6.7194"N, -82° 27' 46.6812"W. All geographic coordinates are North American Datum of 1983 (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The on-scene representative may be present on any Coast Guard, state or local law enforcement, or sponsor provided vessel assigned to patrol the event. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone will be relatively small and exist for a relatively short time. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions,

moreover, vessels may still transit through the area when permitted by the Captain of the Port.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the portion of Lake Erie discussed above during the enforcement of the safety zone established herein.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be enforced for approximately nine hours on either October 27 or 28, 2012.

## 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning

its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We

have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.



#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0889 to read as follows:

§ 165.T09-0889 Safety Zone; Wounded Warriors Benefit, East Huron, OH.

(a) Location. The following area is designated a safety zone: all waters of Lake Erie within a 2500 ft radius of the pumpkin launch site located at position 41° 23' 6.7194"N, -82° 27' 46.6812"W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) Effective and Enforcement Period. This safety zone is closed to all vessel traffic and will be effective from 10:00 a.m. on October 27, 2012 until 7:00 p.m. on October 28, 2012. The safety zone will be enforced from 10:00 a.m. until 7:00 p.m. on October 27, 2012; in the event of inclement weather, the safety zone will be enforced from 10:00 a.m. until 7:00 p.m. on October 28, 2012.

(c) Definitions. The following definitions apply to this section:

(1) "On-scene Representative" means any Coast Guard Commissioned, warrant, or petty officer designated by the Captain of the Port Detroit to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) "Public vessel" means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(d) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative.

(2) This safety zone is closed to all vessel traffic, excepted as may be permitted by the Captain of the Port Detroit or his designated representative. All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) All vessels must obtain permission from the Captain

of the Port or his designated representative to enter, move within, or exit the safety zone established in this section when this safety zone is enforced. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port or a designated representative. While within a safety zone, all vessels must operate at the minimum speed necessary to maintain a safe course.

(e) Exemption. Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(f) Waiver. For any vessel, the Captain of the Port Detroit or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(g) Notification. The Captain of the Port Detroit will notify the public that the safety zones in this section are or will be enforced by all appropriate means to the affected segments of the public including publication in the FEDERAL REGISTER as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to

Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone is cancelled.

Dated: September 28, 2012

J. E. OGDEN  
Captain, U.S. Coast Guard  
Captain of the Port, Sector Detroit

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